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MAILED

AUG 27 2010

OFFICE OF PETITIONS

In re Application of :
Baerlocher :
Application No. 10/649,091 : ON APPLICATION FOR
Filed: August 27, 2003 : PATENT TERM ADJUSTMENT
Docket No. 0112300-1411 :

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(b)," filed June 30, 2010.

The request for review of the patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is **three hundred ninety (390) days**. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On April 12, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment is 512 days. On June 30, 2010, applicant submitted the instant petition. Applicant discloses that he believes that the patent term adjustment indicated in the Determination of Patent Term Adjustment is incorrect and should be recalculated in light of the information disclosure statement, filed December 4, 2008.

A review of the patent term adjustment calculations for the above-identified application reveals that the Office failed enter a reduction for an Information Disclosure Statement filed on December 4, 2008. After applicant filed a reply on August 4, 2008 to a non-final Office action, applicant submitted a supplemental reply or paper in the form of an Information Disclosure Statement (IDS) on December 4, 2008. The record does not support a conclusion that the examiner expressly requested

the filing of the IDS. Further, a review of the IDS, filed December 4, 2008, reveals that applicant did not include a statement under 37 CFR 1.704(d).¹ Thus, applicant failed to engage in reasonable efforts to conclude prosecution of the application. The period of adjustment should have been reduced by 122 days pursuant to 37 CFR 1.704(c)(8), counting the number of days beginning on the day after the date the initial reply was filed, August 5, 2008, and ending on the date that the IDS was filed, December 4, 2008. Accordingly, a period of reduction of 122 days will be entered.

In view thereof, the correct patent term adjustment at the time of mailing of the notice of allowance is **three hundred ninety (390) days** (640 days of Office delay - 250 days of applicant delay).

The Office acknowledges receipt of the required \$200.00 fee under 37 CFR 1.18(e) is required.

Applicant is reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicant will be notified in the Issue Notification letter that is mailed to applicant approximately three weeks prior to issuance.


The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

¹ Pursuant to 37 CFR § 1.704(d):

A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3230.


Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM screen

CC: K&L GATES LLP
P.O. BOX 1135
CHICAGO, IL 60690

Day : Tuesday
Date: 8/17/2010

PALM INTRANET

Time: 08:17:49

PTA Calculations for Application: 10/649091

Application Filing Date:	08/27/2003	PTO Delay (PTO):	640
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	128
Post-Issue Petitions:	0	Total PTA (days):	390
PTO Delay Adjustment:	-122		

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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